IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 519 of 2005.

Decided on: 19.09.2007.

State of H.P. & Others. … … **Petitioners.**

Versus

Baldev Singh & Others. … … **Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioners: **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**

For the Respondents: **Mr. Ashwani Pathak, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid by the petitioners to the award passed by the learned Labour Court-cum-Industrial Tribunal, Dharamshala on 20.11.2004 in reference No.132/99 (RBT 274/04).

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court:-

> **"Whether the termination of services of S/Shri Amar Singh, Karam Chand, Baldev Singh,**

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[1] *Whether reporters of local papers may be allowed to see the judgment? No.*

Kunan, Payar Chand, Rakesh Kumar, Ved Vyas, Jagdish Chand, Nar Singh and Charnu, as Ex-daily wages workers by (1) Executive Engineer, H.P. PWD Division, Salooni, District Chamba, H.P. and (2) Engineer-in-Chief, H.P. PWD, Shimla with effect from the dates shown against each workers, inspite of the directions of H.P. Administrative Tribunal to re-employ them, on grounds of non-availability of work to them and employing juniors without any notice, charge sheet, enquiry and without compliance of section 25(F) of the Industrial Disputes Act, is legal and justified. If not, to what relief of consequential service of compensation the above aggrieved workmen are entitled?"

In sequel to the reference made by the State Government, the respondents (hereinafter referred to as the workmen for convenience sake) had filed their statements of claim. They had primarily contended before the Labour Court that they were retrenched without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). They had further contended before the Labour Court that they had completed 240 days preceding their retrenchment and persons junior to them, namely, Shri Madho Ram, Man Singh, Ganesh Dutt and Ram Dayal were retained while retrenching them. The employer had contested the statement of claim filed by the workmen. The principal stand of the employer before the Labour Court was that the workmen were initially engaged in the year 1994 and they have left their job in the year 1995, but had approached the learned H.P. State Administrative Tribunal by

filing original applications before the Dharamshala Bench of H.P. State Administrative Tribunal. It has further been contended that on the basis of the orders passed by the H.P. State Administrative Tribunal at Dharamshala on 15.3.1995, the workmen were re-engaged, but the workmen had subsequently withdrawn the original applications filed by them in the month of August, 1998. It is also averred in the reply filed to the statement of claim that all the workmen had completed 240 days in the years 1995 to 1998, but had not completed 240 days preceding their retrenchment since they were also engaged with breaks in the year 1999. The Labour Court on the basis of the evidence led by the parties had answered the reference in affirmative on 20.11.2004.

Ms. Meenakshi Sharma, the learned Deputy Advocate General had strenuously argued that the workmen had not completed 240 days preceding their retrenchment since they were also engaged in the year 1999 though they might have completed 240 days in each calendar year with effect from the year 1995 to 1998. She also contended that it is not a case of retrenchment, but the workmen had themselves abandoned their jobs. She has further contended that the Labour Court had exceeded its jurisdiction by granting all the consequential benefits to the workman including re-instatement with full back wages and other consequential benefits. On the other hand, Mr. Ashwani Pathak had supported the award dated 20.11.2004.

I have heard the learned counsel for the parties and have gone through the record carefully.

The workmen were initially engaged in the year 1994 and it appears that they were retrenched in the year 1995 and thereafter they had filed the original applications before the Dharamshala Bench of the H.P. State Administrative Tribunal. The H.P. State Administrative Tribunal granted the interim relief to the workmen on 15th March, 1995 pursuant to which they were directed to be engaged and they were in fact engaged. They had continuously discharged their duties with effect from 1995 to 21.10.1998. The original applications filed by the workmen were withdrawn by them on 21st August, 1998. Though the workmen had claimed that they were retrenched with effect from 22.10.1998, but all of them were permitted to do the work in the year 1999 as well as is evident from man-days chart.

The Labour Court had come to the conclusion that except Ved Vyas, Nar Singh and Karam Chand all the workman had completed 240 days preceding their retrenchment, but the Labour Court had failed to take into consideration that the workmen were also engaged in the year 1999 and they had not completed 240 days preceding their retrenchment in the year 1999. They have worked only for few days as per man-days chart annexed with the reply filed by the employer before the Labour Court. Only one workman, i.e. Nar Singh had completed 240 days preceding his retrenchment. Thus, the finding recorded by the Labour Court

that all the workmen had completed 240 days preceding their retrenchment is liable to be set aside.

Now the Court has to consider whether the workmen were entitled to invoke Section 25-G of the Act or not. The workmen had stated in their claim petition(s) that persons junior to them were retained while retrenching them. Shri Nar Singh had appeared as PW-1 and had given the names of S/Shri Madho Ram, Man Singh, Ganesh Dutt and Ram Dayal, who according to him were junior to them, but were retained at the time of effecting their retrenchment. This statement has not been rebutted by the employer. The employer in fact has not led any oral evidence, but has filed affidavit with a prayer that the same may be treated as evidence. True it is that none of the workmen except Shri Nar Singh had completed 240 days, but for invoking Section 25-G of the Act, the workman is not required to complete 240 days as held by the Hon'ble Supreme Court in ***Central Bank of India vesus S. Satyam and Others, (1996) 5 SCC 419*** that:

> "**Chapter V-A deals with all retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of "last come first go" which is not confined only to workman who have been in continuous service for not less than one year, covered by Section 25-F."**

Their Lordships of the Hon'ble Supreme Court have categorically laid down for invoking Sections 25-G and H, the workman need not complete 240 days in a block of 12 calendar

months. Accordingly, the finding recorded by the Labour Court that the workmen were entitled to protection of Section 25-G of the Act is up-held.

The contention of the learned Deputy Advocate General that the workman had abandoned their jobs has not been substantiated by any reliable evidence. The plea of abandonment is a question of fact and the same is required to be proved in accordance with law. The finding recorded by the Labour Court that the employer has failed to prove the plea of abandonment raised is liable to be up-held.

The upshot of the above discussion is that: (i) the workmen except Shri Nar Singh have not completed 240 days at the time of their retrenchment and thus, they were not entitled to the protection of Section 25-F of the Act; (ii) since the persons junior to the workmen, namely, S/Shri Madho Ram, Man Singh, Ganesh Dutt and Ram Dayal, were retained, they are entitled to invoke Section 25-G of the Act; and (iii) that the employer has failed to prove the plea of abandonment as raised before the Labour Court by leading any reliable evidence.

Accordingly, the writ petition is partly allowed and the award dated 20.11.2004 passed by the Labour Court, Dharamshala is modified to the following extent:-

1. the workmen had not completed 240 days except Shri Nar Singh, thus, they are not entitled to the protection under Section 25-F of the Act. The retrenchment of Shri Nar Singh is declared void *ab*

initio for non-compliance of the provisions of Section 25-F of the Act.

2. since the employer had violated the provisions of Section 25-G of the Act by retaining the juniors at the time of effecting the retrenchment of the workmen, they are entitled to the protection of Section 25-G of the Act only by way of reinstatement, but without any back wages or seniority etc.

Accordingly, the petition stands disposed of. There shall be no order as to costs.

(Rajiv Sharma), Judge.

September 19, 2007 *(sck).*